

ENTERED

August 15, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

TABARI S. STRONG,

Plaintiff,

VS.

BOBBY LUMPKIN,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:21-CV-00261

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**


On July 13, 2022, United States Magistrate Judge Mitchel Neurock issued his “Memorandum and Recommendation of United States Magistrate Judge” (M&R, D.E. 21), recommending that Defendant’s motion to dismiss (D.E. 15) be granted in part and denied in part and that this action be dismissed with prejudice. The parties were provided proper notice of, and opportunity to object to, the Magistrate Judge’s M&R. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. No objections have been timely filed.

When no timely objection to a magistrate judge’s M&R is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the magistrate judge’s M&R. *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Servs. Auto Ass’n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge’s M&R (D.E. 21), and all other relevant documents in the record, and finding no clear error, the Court **ADOPTS** as its own the findings and conclusions of the

Magistrate Judge. Accordingly, Defendant's motion to dismiss (D.E. 15) based on lack of subject matter jurisdiction and Eleventh Amendment immunity is **DENIED** because Plaintiff possesses standing to bring his claims and because the Eleventh Amendment bar does not apply to the prospective injunctive relief requested in this case. The motion to dismiss is **GRANTED** regarding Plaintiff's Fourth Amendment, Eighth Amendment, due process, and equal protection claims against Defendant. Those claims are **DISMISSED** with prejudice for failure to state a claim for relief. The Court **ORDERS** that dismissal of this case counts as a "strike" against Plaintiff for the purposes of 28 U.S.C. § 1915(g), and **INSTRUCTS** the Clerk of Court to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

ORDERED on August 15, 2022.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE